The improvement scheme in question related to all these nine buildings, which are of attap construction. I see no reason to disagree with the learned District Judge's conclusion that the proposed demolitions should be made in the interests of the scheme and of the town improvement to be effected thereby. It follows therefore, in my opinion, that that learned District Judge, a *fortiori*, had sufficient material on which to be reasonably satisfied of those matters.

For these reasons the appeal must be dismissed. As the appellant is legally aided there shall be no order as to costs.

Appeal dismissed.

Solicitors: *Director of Legal Aid; Drew & Napier.*

SITHAMBARAM CHETTIAR v. RAMASAMY

[C. A. (Thomson C.J., Hill & Good JJ.A.) March 30, 1960]

[Penang — F.M. Civil Appeal No. 34 of 1959]

Bills of Sale Enactment (Kedah Enactment No. 10) s. 9; Courts Enactment of Kedah, 1920; Courts Ordinance, 1948 — Jurisdiction to deal with the subject matter of a bill of sale — Whether Sessions Court can entertain claim.

The appellant claimed the sum of $1,820 being the balance of principal and arrears of interest in respect of a debt due by the present respondent and secured by a Bill of Sale executed in accordance with the provisions of the Bills of Sale Enactment, 1912, in proceedings in the Sessions Court at Sungei Patani. The learned President of the Sessions Court gave judgment in favour of the appellant (plaintiff) and respondent (defendant) appealed to the High Court on the ground, *inter alia*, that the Sessions Court had no jurisdiction to deal with the subject matter of a bill of sale. The learned Judge held that the Sessions Court did not have jurisdiction to entertain the claim. The appellant appealed.

Held: by the coming into force of the Courts Ordinance of the Federation of Malaya. 1948, the Courts in Kedah were superseded by the Federation Courts, and therefore, a claim for the recovery of a debt not exceeding $2.000 secured by a Bill of Sale under section 9 of the Bills of Sale Enactment of Kedah, 1912 is within the jurisdiction of the Sessions Court. such a claim not having been expressly withheld from the Sessions Court's jurisdiction by section 69 of the Courts Ordinance.

Per Good J.A.: A statutory provision which involves a question of jurisdiction, unless it is expressed in implicit and unequivocal claim, is not to be read in isolation, but should be considered in the light of any relevant general provisions of the Interpretation and General Clauses Ordinance and of the Courts Ordinance.

Case referred to:—

(1) *Karthigasu* v. *Bachan Singh* [1939] M.L.J. 79.

COURT OF APPEAL, Appeal from the High Court at Alor Star.

R. D. Hume (*Lee Thean-Chu* with him) for appellant.

Lee Kok Liang for respondent.

Cur. Adv. Vult.

Thomson C.J.: This appellant was the plaintiff in proceedings in the Sessions Court at Sungei Patani. He is a licensed moneylender and he alleged that in July, 1955, he lent the defendant the sum of $2,500 in respect of which the defendant executed a moneylender's agreement in the usual form and a Bill of Sale by way of security over certain chattels in accordance with the provisions of the Kedah Bills of Sale Enactment, which has now been repealed but which was in force at all the relevant dates.

Some of the money lent was repaid but it was not all repaid and on 16th August, 1957, the appellant started proceedings in the Sessions Court at Sungei Patani in which he claimed the balance of the loan and "further or other relief" by which he clearly meant foreclosure under the Bill of Sale.

The suit was defended but in the event the learned President who tried it gave judgment in favour of the appellant for the amount claimed and foreclosure and sale.

Against that decision the defendant (the present respondent) appealed to the High Court. In his Memorandum of Appeal he stated eight separate and distinct grounds of appeal. Two of these were subsequently withdrawn. Of the remaining six grounds of appeal the first was that the Sessions Court had no jurisdiction to deal with the case at all. The other grounds were largely of a technical nature and were based on provisions of the Moneylenders Ordinance or the Kedah Bills of Sale Enactment.

The Judge who heard the appeal listened to argument on all the grounds of appeal except the two which had been withdrawn. In the event for reasons which he has stated in a very careful judgment he came to the conclusion that the first ground of appeal was well-founded, that is to say he came to the conclusion that the Sessions Court had no jurisdiction to entertain the matter at all. Having come to that conclusion he considered it unnecessary to deal with the other grounds of appeal and he accordingly allowed the appeal with costs "without prejudice to the plaintiff/respondent bringing a fresh action".

Against that decision the appellant (the original plaintiff) has now appealed to this Court.

I have had the advantage of reading the judgment which is about to be delivered by Mr. Justice Good. I agree with his reasoning and with the conclusions to which that reasoning leads him that the Judge who heard the original appeal was wrong and that the Sessions Court had jurisdiction to deal with the case.

I would be content to leave the matter there but as we are disagreeing with the Judge in the Court below I would add a few words of my own. The words of section 65 of the Courts Ordinance are very clear. It provides that subject to the limitations contained in the Ordinance itself "a Sessions Court shall have jurisdiction to try all actions and suits of a civil nature where the . . . . . value of the subject matter does not exceed $2,000". To my mind, even if it were possible at the time of its enactment to read into the Kedah Enactment a provision giving

exclusive jurisdiction in actions relating to Bills of Sale to the now defunct High Court of Kedah, now that that Court is defunct it would need much clearer and more explicit language than I can find in the Kedah Enactment to deprive the Sessions Court of any of the jurisdiction given to it by section 65 of the Courts Ordinance.

Having reached the conclusion that the Sessions Court had jurisdiction to deal with the case there remains the question of what course this Court should now take. The position is that the present respondent still has a complaint against the judgment of the Sessions Court on a number of grounds which have not received the judicial consideration to which they are entitled.

As I understand the law it is not possible for us to send the matter back for further consideration by the Judge who heard the original appeal although he heard argument on the appeal as a whole and to invoke his assistance it would be necessary to send the case back for a partial re-trial.

On the other hand this Court has jurisdiction to consider the appeal as a whole and in my opinion this is a case where we should exercise that jurisdiction. I would accordingly leave the matter as it is now that we have stated our views on the question of jurisdiction and would adjourn it for further hearing at the next sitting of the Court at Penang when we would listen to argument on the outstanding grounds of appeal and finally dispose of it.

Hill J.A.: I have read the judgment which my brother Good proposes to deliver and agree with it.

Whatever doubt there may have been with regard to jurisdiction prior to 1948 was in my view resolved in that year by the coming into force of the Courts Ordinance whereby the Courts in Kedah were superseded by the Federation Courts. It seems clear, therefore, that a claim for the recovery of debt not exceeding $2,000 secured by a Bill of Sale is within the jurisdiction of the Sessions Court, such a claim not having been expressly withheld from the Sessions Court's jurisdiction by section 69 of the Courts Ordinance.

With regard to the question of what course this Court should now take, I agree with the learned Chief Justice that we should leave the matter as it is now that we have stated our views on the question of jurisdiction and adjourn it for further hearing and argument on the outstanding grounds of appeal at the next sitting of the Court at Penang.

Good J.A.: This is an appeal from a decision of the High Court at Alor Star in an appeal from a decision of the Sessions Court at Sungei Patani. The claim in the Sessions Court was brought by the present appellant for the sum of $1,820 being the balance of principal and arrears of interest in respect of a debt due by the present respondent and secured by a Bill of Sale executed in accordance with the provisions of the Bills of Sale Enactment (Kedah Enactment No. 10). The learned President of the Sessions Court gave judgment in favour of the plaintiff and the defendant appealed to the High Court on the ground, *inter alia*, that the Sessions Court had no jurisdiction to deal with the subject-matter of a bill of sale. The learned Judge dealt with that ground of appeal only as he came to the conclusion that the Sessions Court did not have jurisdiction to entertain the claim and consequently he thought it unnecessary to consider the other grounds of appeal.

The law applicable to the question for determination in this appeal is contained in section 9 of the Bills of Sale Enactment of Kedah. This Enactment was repealed by the Bills of Sale Ordinance, 1950 which came into force on 1st January, 1959, but the Enactment was still in force in Kedah at the time of the proceedings in the Sessions Court. The sole question in this appeal is whether on a proper construction of section 9 of the Enactment the "Court" referred to is the High Court or whether the expression is to be interpreted as including subordinate courts.

Section 9 of the Enactment reads as follows:—

> "9. If the Chargor does not pay the debt or the interest on the debt to the Chargee according to the terms of the agreement the Chargee shall take out a summons in the Court against the chargor for the whole of the debt. If the Court orders the Chargor to pay the debt and he fails to pay, the Court may order the charged property to be sold by auction and the proceeds to be paid to the Chargee, provided that before paying anything to the Chargee the Court shall deduct all the expenses of the sale. If the value of the property sold is less than the amount of the debt and the costs of the sale the Chargee may levy execution upon other property belonging to the debtor."

The Bills of Sale Enactment was passed in the year 1331 (1912) and after two amendments assumed its final form, as it was at the date of these proceedings, in 1353 (1934). There was no definition of "Court" in the Kedah Interpretation Enactment which was passed in 1352 (1933) but the structure of the Courts of the State was set out in section 3 of the Courts Enactment which was passed in 1339 (1920) and amended from time to time up to 1353 (1934). From the passing of that Enactment up to the end of 1948, there were in the State of Kedah, besides a Court of Appeal and a Muslim Religious Court known as the Sheraiah Court, a High Court consisting of a First and Second Division and Courts of Magistrates of the First Class, Second Class and Third Class. In this appeal we are not called upon to decide (though it may be desirable for purposes of construction to consider) to which of these Courts reference is made in section 9 of the Bills of Sale Enactment since the Courts in the State of Kedah at the time when these proceedings were taken were the Courts established under the Courts Ordinance, 1948 of the Federation of Malaya: that is to say the High Court, the Sessions Court and the Courts of Magistrates of the First Class, Second Class and Third Class. We are not concerned

with Magistrates' Courts since in any event, the subject-matter of the proceedings is outside their civil jurisdiction and the question before us relates only to the jurisdiction of the Sessions Court to try this claim.

It is, however, necessary for the purpose of construction to discover whether there is in section 9 of the Bills of Sale Enactment anything repugnant to the interpretation of the word "Court" as extending to subordinate Courts. The learned Judge who heard the appeal in the High Court was of the opinion that the Court referred to in section 9 could only be the High Court. He reached this conclusion for two reasons: (a) on the authority of the Perak case of *Karthigasu* v. *Bachan Singh* [1] the expression "summons" in section 11(b) of the F.M.S. Bills of Sale Enactment meant an Originating Summons and although there was no provision for Originating Summonses in the Kedah Civil Procedure Code, it had been the practice of the High Court of Kedah for many years to deal with matters by way of Originating Summons so that the practice had almost become law; and (b) that on an examination of the sections of the Enactment dealing with the registration of Bills of Sale (which had to be registered in the High Court) the reference to the Court in section 9 must be construed as a reference to the High Court.

In my view the argument based on *Karthigasu's* case is fallacious; indeed, it is not an argument at all but an analogy. The *ratio decidendi* of that case was that the word "summons" in section 11(b) of the F.M.S. Bills of Sale Enactment must mean an Originating Summons by reason of the definition of Originating Summons contained in section 2 of the F.M.S. Civil Procedure Code. In the absence of any corresponding provision in the Kedah Civil Procedure Code the learned Judge in this case imported a matter of common knowledge, namely that by long-established practice proceedings by way of Originating Summons were dealt with by the High Court of Kedah. I do not consider that this is a valid argument for the construction at which he arrived.

There seems to me to be more substance in the learned Judge's second reason. Section 2 of the Enactment provides that no Bill of Sale creating a charge upon property shall be recognised as such unless it is registered in the Court. The learned Judge rightly points out that "the Court" in that section must mean the High Court by reason of the duty imposed by section 6 upon the Registrar of the High Court to keep the register of Bills of Sale. It is indeed clear from the provisions of sections 4, 6, 7, 8, 10 and 11 that for the purposes of registering Bills of Sale the Court referred to is the High Court and no other. This still leaves open the question whether for the purposes of recovering a debt secured by a Bill of Sale or of realising the security, the jurisdiction is conferred exclusively upon the High Court, that is to say, whether "the Court" in section 9 necessarily means the same thing as "the Courts" in section 2. There is no settled rule of interpretation on this question. *Maxwell*, on the Interpretation of Statutes, 9th edition, at pages 322 to 323, cites authorities for the proposition that it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act and that accordingly in ascertaining the meaning to be attached to a particular word in a section of an Act, though the proper course would seem to be to ascertain that meaning if possible from a consideration of the section itself, yet, if the meaning cannot be so ascertained, other sections may be looked at to fix the sense in which the word is there used. Maxwell, however, goes on to say "But the presumption is not of much weight. The same word may be used in different senses in the same statute and even in the same section" and he cites illustrations from English Acts, supported by judicial authorities, in which such differences of meaning occur. There does not appear to me to be any necessary implication that the Court referred to in section 9 is the same as the Court referred to in section 2. The construction to be placed upon the expression in section 2 is necessarily the High Court since it is used in the context of registration and the provisions governing registration are confined to the High Court by reason of the duties imposed upon the Registrar thereof. Section 9, however, is not dealing with registration but with the recovery of money and it can be argued, and the argument is one which commends itself to me, that in section 9 the Court means any Court of competent jurisdiction to deal with the value of the subject-matter in dispute; and that where the amount secured by the Bill of Sale did not exceed $500 the Court of a Magistrate of the First Class could have dealt with the case by reason of its jurisdiction under section 49(1) of the Kedah Courts Enactment and if the value of the subject-matter did not exceed $250 the Court of a Magistrate of the Second Class could have dealt with it by virtue of the jurisdiction conferred by section 50(1). I am to some extent fortified in this view by the fact that section 22 of the Kedah Civil Procedure Code provided that civil proceedings, in the lower Courts as well as in the High Court, were to be commenced by summons. The expression "shall take out a summons in the Court" in section 9 of the Bills of Sale Enactment would therefore have been equally applicable to proceedings in the High Court and to proceedings in the appropriate lower Court.

What we are concerned with here, however, is the position after the coming into force of the Courts Ordinance, 1948, when the Kedah Courts were superseded by the Courts of the Federation. Under section 65(1) of that Ordinance a Sessions Court is given jurisdiction to try all actions and suits of a civil nature where the amount in dispute or the value of the subject-matter does not exceed $2,000. The general application of

section 65(1) is limited by a number of exceptions set out in section 69 which expressly withhold from the Sessions Court jurisdiction in certain specified types of proceedings of a civil nature. A claim for the recovery of a debt secured by a Bill of Sale is not one of the specified exceptions.

By section 2(1)(16) of the Interpretation and General Clauses Ordinance, 1948, "Court" means any Court of the Federation of competent jurisdiction and this is the meaning which must be assigned to it wherever it appears in any written law unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided. For the reasons which I have already expressed I cannot see that there is in the Kedah Bills of Sale Enactment anything inconsistent with the construction of the expression "the Court" in section 9 as meaning a Court of competent jurisdiction. Actions in the Sessions Court are commenced by summons under Order 6, Rule 1(1) of the Subordinate Courts Rules so that there is no procedural impediment to such a construction.

Even if a contrary construction is to be given to section 9, so that it must be held to have been the intention of the Kedah State Legislature to exclude actions on Bills of Sale from the jurisdiction of the lower Courts in the State, it would still be wrong, in my opinion, to hold that the jurisdiction of the subordinate Courts in the Federation established by the Courts Ordinance, 1948, is in any way fettered by the intention of an earlier State Enactment, unless the Federal Legislature has in terms or by necessary implication permitted the fetters to remain. A statutory provision which involves a question of jurisdiction, unless it is expressed in explicit and unequivocal terms, is not to be read in isolation, but should be considered in the light of any relevant general provisions of the interpretation and General Clauses Ordinance and of the Courts Ordinance. The present effect of section 9 can only be ascertained by a comparative study of the relevant contemporary legislation. The effect of section 2(1)(16) of the Interpretation and General Clauses Ordinance, 1948 and of section 65(1) of the Courts Ordinance, 1948 must be given due weight. Taking these provisions into consideration I am of the opinion that provided the amount secured by the Bill of Sale does not exceed $2,000 a Sessions Court is a Court of competent jurisdiction for the purpose of bringing proceedings by way of summons under section 9 of the Kedah Bills of Sale Enactment.

If the question of jurisdiction were the only ground of appeal I would allow the appeal; but the matter does not end here, since the Memorandum of Appeal to the High Court contained other grounds which the learned Judge did not consider on account of the view that he took on the question of jurisdiction. As to the course which should now be taken I agree with the learned Chief Justice that having stated our views on the question of jurisdiction we should hear argument on the outstanding grounds of appeal and that this Court should then dispose of the appeal as a whole.

Order accordingly.

Solicitors: *Lee Thean-Chu; Lee Kok Liang.*

TAN KWEE LOW v. LEE CHONG & ANOR.

[O. C. J. (Neal J.) May 7, 1960]

[Muar — Civil Suit No. 28 of 1959]

Negligence — Agency — Bailment — Negligent driving of motor vehicle — Liability of owner — Car driven by agent.

Road Traffic — Breach of Statutory Duty — Third party risks — Driving uninsured car — Owner's liability — Motor vehicles Third Party Risks Regs., reg. 3.

Where there has been a bailment, the owner of a motor vehicle is not responsible to third persons for any injury which they may sustain as a result of the negligence of the bailee in the control or management of the vehicle. But if the owner, though he places the vehicle at the disposal of someone else, retains control over it by himself or his servants, so that there is no bailment, he remains responsible to third parties for any damage caused by negligence in its management.

Whether there is a bailment or not is a question which must depend upon the particular circumstances of the case.

The plaintiff sued both the defendants claiming general and special damages in respect of an accident between a motor car owned by the first defendant and negligently driven by the second defendant and a motor cycle ridden by the plaintiff. The plaintiff's statement of claim alleged that the second defendant was the servant or agent of the first defendant.

The plaintiff sought alternatively to claim damages from the second defendant on the ground of breach of statutory duty in permitting the first defendant, an uninsured person and alleged by the plaintiff to be without means, to drive the car.

Held: (1) on the whole of the evidence, the arrangement entered into between the first and second defendants was not a bailment but was either an express agency or a placing of the car at the disposal of the second defendant. Accordingly the plaintiff is entitled to judgment as against both defendants;

(2) to succeed on the alternative claim, the plaintiff must bring himself within the case of *Monk* v. *Warbey*(10). A necessary condition for liability under *Monk* v. *Warbey* is that the person primarily responsible for the injury is in such financial position as to be unable to pay any judgment. On the evidence inability on the part of the first defendant to pay for the damages cannot be inferred and hence the plaintiff's alternative claim cannot succeed.

Cases referred to:—

(1) *Hewitt* v. *Bonvin* [1940] 1 K.B. 188.

(2) *Ormrod* v. *Crosville Motor Services, Ltd.* [1953] 2 All E.R. 753; [1953] 1 W.L.R. 1120.

(3) *Parket* v. *Miller* (1926) 42 T.L.R. 408.